

USDC SDNY DOCUMENT ELECTRONICALLY FILED DOC #: _____ DATE FILED: 5/24/2023
--

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----X
CRYSTAL ADAMS, *et al.*,

Plaintiffs,

-v -

DEVA CONCEPTS, LLC,

Defendant.
-----X

1:20-cv-9717-GHW

ORDER

GREGORY H. WOODS, District Judge:

On May 7, 2022, Defendant filed a motion to dismiss. Dkt. No. 65 (notice of motion); Dkt. No. 65 (“D’s Mem.”). The motion sought to dismiss the claims pursued by Katherine Robaina in this case. D’s Mem. at 14. Defendant argued that because Ms. Robaina had not sought exclusion from the class action certified by this Court in *In Re: Deva Concepts Products Liability Litigation*, 1:20-cv-1234 (the “Class Action”), her claims against Defendant had been released. The Court’s order granting final approval of the settlement in the Class Action released all claims by “Settlement Class Members” against Defendant that “related in any manner to the subject matter of the Litigation, including, but not limited to, design, manufacture, distribution, sale, and use of the Subject Products by any Class Member.” Dkt. No. 66-2 (the “Final Order”).

In her opposition to the motion to dismiss, Ms. Robaina did not present any substantive argument in opposition to Defendant’s motion. She did not argue that the claims presented in this case did not fall within the scope of the claims released by the Final Order, or that she was otherwise not properly captured within the scope of the Settlement Class certified in the Class Action. She argued only that she expected to appeal the Court’s decision denying her leave to exclude her claims from the Class Action, and asked that the Court defer ruling on the motion until the Second Circuit had ruled on the anticipated appeal. Dkt. No. 67 at 7. The Court granted Ms. Robaina’s request and deferred ruling on Defendant’s motion to dismiss Ms. Robaina’s claims in this case.

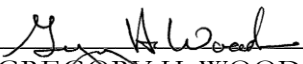
On April 28, 2023, the Second Circuit ruled on the appeal, upholding the Court's conclusion that Ms. Robaina was not excused from her failure to timely seek exclusion from the Class Action. *Robaina v. Deva Concepts, LLP*, No. 22-1142, 2023 WL 3144038, at *1 (2d Cir. Apr. 28, 2023). The mandate was issued on May 19, 2023.

Because Ms. Robaina's did not exclude herself from the Class Action, as a member of the settlement class, her claims in this action were released in accordance with the terms of the Final Order. Therefore, Defendant's motion to dismiss any claims by Ms. Robaina in this action is granted.

The Clerk of Court is directed to remove Katherine Robaina from the caption of this case.

SO ORDERED.

Dated: May 24, 2023
New York, New York



GREGORY H. WOODS
United States District Judge